

*United States Court of Appeals
for the Second Circuit*



APPENDIX

B
BJS

75-1273

9
APPEAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

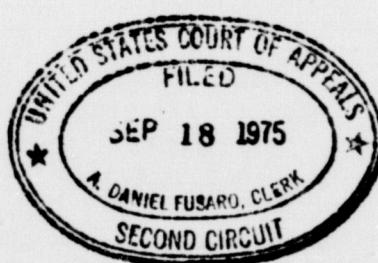
Plaintiff-Appellee,

vs.

LEON ROGERS,

Defendant-Appellant.

APPENDIX FOR DEFENDANT-APPELLANT



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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

1a

75 CHM. 402

D. C. Forte No. 300 Rev.

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U. S.:

129.

1. CHARLES COPPERS, a/k/a "C.J."-1&2
2. LEON ROGERS-1&4
3. MICHAEL MARCIANO-1, 3&5
4. THOMAS CARROLL-1, 3&5
5. VINCENT, MC CLUSKEY-1, 3&5

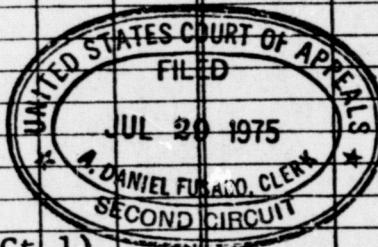
Steven A. Schatten, AUSA.
791-9154

791-9154

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For Defendant:

(01)	STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
	J.S. 2 mailed	Clerk				
	J.S. 3 mailed 2-43	Marshal				
	Violation	Docket fee				
	Title 18					
	Sec. 371,659					
	Consp. to commit intestate theft. (Ct. 1)					
	Theft from interstate shipment. (2-5)					
	(Five Counts)					



DATE	PROCEEDINGS
4-17-75	Filed indictment. (Superseding 74Cr1002 and referred to Bonsal, J.)
04-18-75	Filed affdvt. for writ of habeas corpus ad testificandum for Carlton Boyd, ret. 4-21-75.
04-22-75	Filed Govt.'s affdvt. for writ of habeas corpus ad pros. for Vincent McCluskey ret. 4-29-75.
04-22-75	Filed Govt.'s affdvt. for writ of habeas corpus ad pros. for Thomas Carroll ret. 4-29-75.
05-27-75	Jury trial begun before Judge Bonsal as to defts. L. Rogers, M. Marciano.
05-28-75	Trial cont'd.
05-29-75	Trial cont'd.
05-30-75	Trial cont'd. and concluded. Jury verdict defts. Rogers & Marciano guilty. Pre-sentence reports ordered. 7-14-75 set for sentence. Bail cont'd. Bonsal, J.

DATE	PROCEEDINGS
6-23-75	Filed Govt.'s request to charge.
6-23-75	Filed Govt.'s suppl. requests to charge.
6-23-75	Filed Govt.'s memo. of law on admissibility of prior similar acts.
07-14-75	Filed deft.'s notice of appeal from judgment docketed 7-14-75. mailed notices "Leave to appeal in forma pauperis is granted. Bonsal, J.
7-18-75	Filed CJA 20 application of payment of fees of Lawrence Levner. Bonsal, J. (for deft. L. Rogers) issued copies CJA Clerk
7-14-75	LEON ROGERS-(atty. present) Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'l. for Imprisonment for a period of THREE (3) YEARS on each of counts 1 and 4, to run concurrently with each other. Sentence is stayed pending appeal. Bail pending appeal fixed in the amount of \$25,000. PRB. Bonsal, J. issued all copies
7-14-75	MICHAEL MARCIANO(atty. present) Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'd. for imprisonment for a period of NINE (9) MONTHS on count 1. Imposition of sentence on counts 3 and 5 is suspended. Deft. is placed on probation for a period of THREE (3) YEARS, on each count, to commence upon expiration of confinement, subject to the standing probation order of this Court. Probation on counts 3 and 5 to run concurrently with each other. Bail fixed at \$10,000. pending appeal. Bonsal, J. issued all copies
7-17-75	Filed transcript of record of proceedings, dated May 27, 28, 29, 30, 1975.
7-17-75	Filed deft. Michael Marciano's notice of appeal from judgment of July 14, 1975. mailed copies to U.S. Atty. and deft. on 7-22-75.

A TRUE COPY
 RAYMOND E. THOMPSON, CLERK
Raymond E. Thompson
 B.M. DEPUTY CLERK

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74-3397
d-199

INDICTMENT (Filed April 17, 1975) (pp. 3a to 10a)

3a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

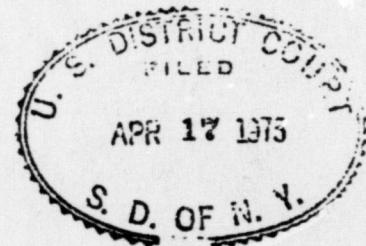
75 CRIM. 402

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UNITED STATES OF AMERICA : :

- v - : INDICTMENT

CHARLES COPPERS, a/k/a "C.J.," : S. 75 Cr.
LEON ROGERS, MICHAEL MARCIANO, ✓
THOMAS CARROLL and VINCENT
MC CLUSKEY, : :

Defendants. : :



-----x
COUNT ONE

The Grand Jury charges:

1. From on or about the 15th day of August, 1971, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together, and with each other, and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 659 and 2.

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4a

2. It was part of said conspiracy that CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, and certain of their co-conspirators would unlawfully, wilfully and knowingly steal and take and carry away from a motor truck, with intent to convert to their own use, goods of a value greater than \$100 which were moving as, which were part of, and which constituted an interstate shipment of freight express.

3. It was further a part of said conspiracy that CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, and certain of their co-conspirators would unlawfully, wilfully and knowingly take, carry and deliver said goods of a value greater than \$100 to defendants MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY.

4. It was further part of said conspiracy that defendants MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY would unlawfully, wilfully and knowingly buy, receive, have in their possession, sell

and dispose of the aforesaid goods of a value greater than \$100, knowing said goods to have been stolen.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others, were committed in the Southern District of New York, and elsewhere:

1. In or about December 1972, CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd and James Dixon travelled from New York City to the Two Guys Bar in North Bergen, New Jersey.
2. In or about December, 1972, Carlton Boyd talked with MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY at the Two Guys Bar in North Bergen, New Jersey.
3. In or about December, 1972, Carlton Boyd had a telephone conversation with MICHAEL MARCIANO.
4. On or about the 15th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd and James Dixon travelled in an automobile in downtown Manhattan in New York City.
5. On or about the 15th day of December, 1972, in downtown Manhattan in New York City, Carlton Boyd, carrying a gun, and James Dixon entered an Arrow Transportation Company motor truck and ordered the driver out of the motor truck.
6. On or about the 15th day of December, 1972, in downtown Manhattan in New York City, Carlton Boyd and James Dixon placed the truck driver in the back seat of an automobile.
7. On or about the 15th day of December, 1972, Carlton Boyd and James Dixon travelled around New York City with the truck driver in the back seat of the automobile.
8. On or about the 15th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.," drove the Arrow Trans-

portation Company motor truck in downtown Manhattan in New York City.

9. On or about the 15th day of December, 1972, Carlton Boyd talked on the telephone with MICHAEL MARCIANO.

10. On or about the 17th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.", Carlton Boyd and James Dixon sat in an automobile in the vicinity of 125th Street and the West Side Drive in Manhattan in New York City.

11. On or about the 17th day of December, 1972, THOMAS CARROLL and VINCENT MC CLUSKEY travelled in an automobile to the vicinity of 125th Street and the West Side Drive in Manhattan in New York City.

12. On or about the 17th day of December, 1972, in the vicinity of 125th Street and the West Side Drive in Manhattan in New York City, THOMAS CARROLL threw a bag containing \$3,600 into an automobile in which CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd, and James Dixon were sitting.

13. On or about the 22nd day of January 1973, LEON ROGERS, Carlton Boyd and James Dixon travelled in an automobile in downtown Manhattan in New York City.

14. On or about the 22nd day of January, 1973 in downtown Manhattan in New York City, LEON ROGERS and Carlton Boyd entered a Connecticut Seafood Company motor truck with guns and ordered the driver out of the motor truck.

15. On or about the 22nd day of January, 1973, in downtown Manhattan in New York City, LEON ROGERS and Carlton Boyd placed the truck driver in an automobile.

16. On or about the 22nd day of January, 1973, Carlton Boyd and James Dixon travelled in New York City and New Jersey with the truck driver in the back seat of the automobile.

17. On or about the 22nd day of January, 1973, LEON ROGERS drove the Connecticut Seafood Company motor truck from downtown Manhattan in New York City to New Jersey.

18. On or about the 22nd day of January 1973 in New Jersey, Carlton Boyd had a telephone conversation with MICHAEL MARCIANO.

19. On or about the 22nd day of January, 1973, THOMAS CARROLL drove the Connecticut Seafood Company motor truck in New Jersey.

20. On or about the 25th day of January, 1973, LEON ROGERS, Carlton Boyd and James Dixon sat in an automobile in the vicinity of 177th Street and Broadway in Manhattan in New York City.

21. On or about the 25th day of January, 1973, THOMAS CARROLL and VINCENT MC CLUSKEY travelled in an automobile to the vicinity of 177th Street and Broadway in Manhattan in New York City.

22. On or about the 25th day of January, 1973, in the vicinity of 177th Street and Broadway in Manhattan in New York City, LEON ROGERS, Carlton Boyd and James Dixon received approximately \$5,000 from THOMAS CARROLL and VINCENT MC CLUSKEY.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 15th day of December, 1972, in the Southern District of New York, CHARLES COPPERS, a/k/a "C.J.," the defendant, unlawfully, wilfully and knowingly, and with intent to convert to his own use, did steal, take and carry away from an Arrow Transportation Company motor truck goods of a value greater than \$100.00, to wit, 645 cases of "Adria" canned hams, which were moving as, which were a part of, and which constituted an interstate shipment of freight and express.

(Title 18, United States Code, Sections 659 and 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 15th day of December, 1972, in the State of New Jersey, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, wilfully and knowingly did buy, receive and have in their possession goods of a value greater than \$100, to wit, 645 cases of "Adria" canned hams, which had been unlawfully stolen, taken and carried away from a motor truck in interstate commerce in the Southern District of New York, knowing the said goods to have been stolen and unlawfully taken and carried away from said motor truck.

(Title 18, United States Code, Sections 659 and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 22nd day of January, 1973 in the Southern District of New York, LEON ROGERS, the defendant, unlawfully, wilfully and knowingly, and with intent to convert to his own use, did steal, take and carry away from a Connecticut Seafood Company motor truck goods of a value greater than \$100, to wit, 20,000 pounds of assorted frozen fish, which were moving as, which were a part of, and which constituted an interstate shipment of freight and express.

(Title 18, United States Code, Sections 659 and 2.)

COUNT FIVE

The Grand Jury further charges:

On or about the 22nd day of January, 1973, in the State of New Jersey, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, wilfully and knowingly did buy, receive and have in their possession goods of a value greater than \$100, to wit 20,000 pounds of assorted frozen fish, which had been unlawfully stolen, taken and carried away from a motor truck

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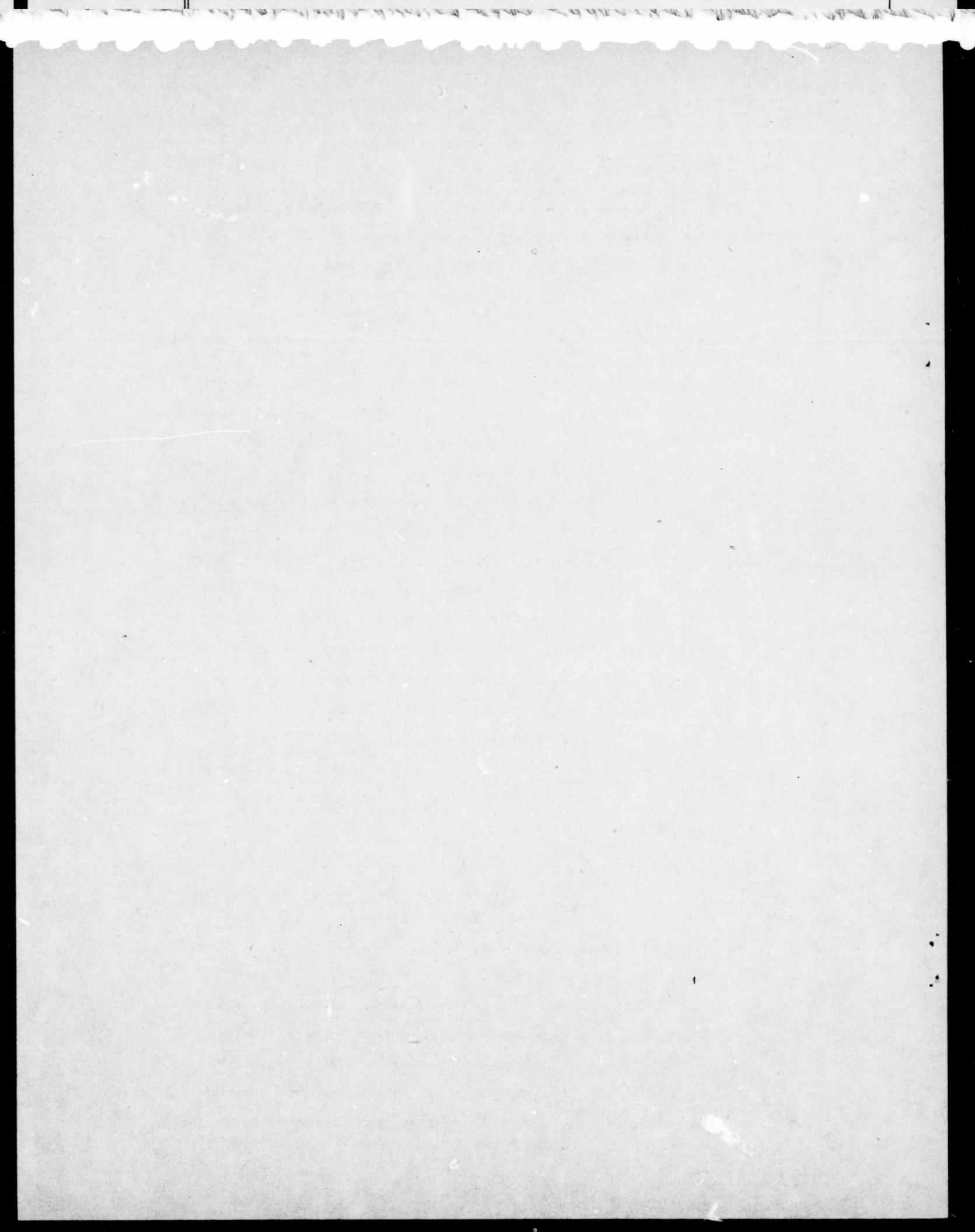
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in interstate commerce in the Southern District of New York, knowing the said goods to have been stolen and unlawfully taken and carried away from said motor truck.

(Title 18, United States Code, Sections 659 and 2.)

Irving J. Baird
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney



United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

CHARLES COPPERS, a/k/a "C.J.",
LEON ROGERS, MICHAEL MARCIANO,
THOMAS CARROLL and VINCENT McCLUSKEY,

Defendants.

INDICTMENT

S. 75 Cr.

(18 USC §§ 659 and 2.)

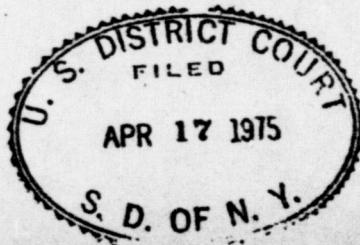
PAUL J. CURRAN

United States Attorney.

A TRUE BILL

Paul J. Curran
Foreman.

FPI-50-3-19-71-FM-000



MAY 27 1975 JURY CONVICTED
RE: DEFTS. LEON ROGERS, MICHAEL MARCIANO,
THOMAS CARROLL and VINCENT McCLUSKEY
BONSAU J.

MAY 28 1975 TRIAL CONT'D

MAY 29 1975 TRIAL CONT'D

MAY 30 1975 TRIAL CONT'D + CONCLUDED
RE: DEFTS. ROGERS & MARCIANO CONVICTED
RE: DEFTS. ORDERED TO STAY OF JAIL
SENTENCE OBAIL CONT'D.
BONSAU

CLERK

JUDGE

DEFENDANT

WITNESS

CLERK

JUDGE

JUL 14 1975 SENTENCE MICHAEL MARCIANO
KENNETH CLAUBER (PRESENT)
COMMITTED TO CUSTODY OF CUSTODY GEN
FOR IMPRISONMENT FOR 9 MONTHS.
IMPOSITION OF SENTENCE DEFERRED
A PROVISION 3 yrs to commence if def. not
COMPLETION OF SENTENCE ON COUNT I.
DEFENDANT CONCURRENTLY BAIL \$10,000
PENDING APPEAL, ADVISED OF RIGHT TO APPEAL
BONSAU

SENTENCE LEON ROGERS (COUNT II)
CONCURRENTLY (PRESENT) COMMITTED TO CUSTODY OF
CUSTODY GEN FOR IMPRISONMENT FOR 9 MONTHS
A PROVISION 3 yrs to commence if def. not
COMPLETION OF SENTENCE ON COUNT II.
DEFENDANT CONCURRENTLY BAIL \$10,000
PENDING APPEAL, ADVISED OF RIGHT TO APPEAL
BONSAU

CHARGE TO THE JURY (pp.11a to 55a)

1 jwp

469

2 THE CLERK: No, I haven't, Judge. I can find
3 out downstairs.

4 Here he is now, Judge.

5 THE COURT: Well, they are all here, so that is
6 that.

7 (In open court, jury present.)

8 THE COURT: Good morning, ladies and gentlemen.
9 There was a little trouble on the subway this morning, I
10 gather.

11 JURORS: Yes.

12 JUROR NO. 7: I was the one who was late.

13 Sorry, your Honor.

14 THE COURT: That is not your fault. Blame i
15 on the Authority.

16 Mr. Foreman, as you are, Mr. Horton, by virtue
17 of occupying this chair, and Ladies and Gentlemen of the
18 Jury:

19 First of all, I would like to join with the
20 lawyers in thanking each of you for the care and attention
21 which you have shown throughout this short trial and to
22 tell you how much I appreciate the sacrifices I know that
23 each of you have had to make in your own personal life
24 so that you could serve in this very important public
25 capacity of being on a Federal jury.

2 I am sure you will bear with me and give me the
3 same degree of attention you have shown throughout so that
4 you may understand the principles of law that apply to this
5 case.

6 Remember I told you when you were selected that
7 it is your duty here to weigh the evidence calmly and dis-
8 passionately without any sympathy and without any pre-
9 judice for or against either the government or these two
10 defendants.

11 I told you that everyone appearing before this
12 bar of justice is entitled to a fair and impartial trial,
13 regardless of his occupation or station in life, and I told
14 you that your verdict here must be based solely on the
15 testimony that you have heard from that witness chair and
16 on the exhibits which were received in evidence during the
17 trial and on nothing else at all.

18 And I told you that it was my function to instruct
19 you as to the law and on that you must accept my in-
20 structions, but, on the other hand, the jury are the sole
21 judges of the facts. It is not what the lawyer says a
22 witness testified to or the documents say, or what I say
23 on that subject, but what you, the jury, remember and
24 decide.

25 Remember I told you that during the trial I

2 would have conversations with one or the other of the
3 lawyers -- and, indeed, I did; I sustained objections
4 and I overruled them -- and I told you then, and I repeat
5 now, please pay no attention to all that.

6 Above all, ladies and gentlemen, draw no
7 inference from anything that I may have said during the
8 course of this trial that might lead you to believe that
9 I favor one side or the other here. Of course, I don't.
10 That is not my province, that is your province.

11 Throughout this trial, ladies and gentlemen,
12 I will instruct you that you may not convict either of these
13 defendants unless and until you are satisfied that the
14 government has proven each element of the crime charged
15 beyond a reasonable doubt.

16 What do we mean by the words "beyond a reasonable
17 doubt"?

18 Well, of course, the words suggest the answer.
19 It is a doubt based on reason, a doubt which a reasonable
20 man or woman might entertain. However, a reasonable doubt
21 is not a fanciful doubt, not an imagined doubt, it is not
22 a doubt that a juror might conjure up in order to avoid
23 performing an unpleasant task. It is a reasonable doubt,
24 it is a doubt which arises in the juror's mind because of
25 something in the evidence in the case or lack of evidence

2 in the case. It is the kind of doubt which would cause a
3 reasonable man or woman in a more serious and important
4 affair in his or her own life to hesitate to act. And
5 the burden is on the government to prove the guilt of a
6 defendant beyond a reasonable doubt.

7 The government need not prove a defendant's
8 guilt beyond all possible doubt. If that were the rule,
9 few people, however guilty they might be, would ever be
10 convicted.

11 In this world of ours it is practically im-
12 possible for one to be absolutely and completely convinced
13 of any controverted fact which by its nature is not sus-
14 ceptible to mathematical decision or to mathematical cer-
15 tainty. So the law provides that the government prove
16 the guilt of the defendant beyond a reasonable doubt, not
17 beyond all possible doubt.

18 When I review the indictment with you, ladies
19 and gentlemen, I remind you, as I told you at the outset,
20 that the indictment is merely the statement of the charges,
21 the way the government brings into court individuals which
22 it claims have violated the law.

23 I told you that the indictment is not evidence
24 of the guilt of either of these defendants, and the
25 indictment does not detract in any degree from the presumpt-

1 jwp

2 ion of innocence with which the law surrounds each of these
3 defendants until their guilt is proven.

4 This presumption of innocence remains with each
5 of these defendants throughout the trial and applies to a
6 consideration of each of the essential elements of the
7 crimes charged, and this presumption of innocence remains
8 unless and until you, the jury, are satisfied beyond a
9 reasonable doubt of the guilt of a defendant as charged.

10 Each of these defendants had pled not guilty
11 here and by doing so he has put in issue every material
12 allegation in the indictment.

13 As I mentioned to you, the burden is on the
14 government to prove each of these elements beyond a reason-
15 able doubt.

16 Of course, if the government has not done so,
17 then you would find the defendant not guilty with respect
18 to that charge.

19 Bear in mind, ladies and gentlemen, that there
20 are two defendants here -- Mr. Rogers and Mr. Marciano.
21 They are charged as two individuals and the guilt or in-
22 nocence of each of them is to be passed on by you separately.

23 Guilt or innocence is a personal thing and each
24 of these defendants has the right to the same consideration
25 on your part as if he were being tried alone.

2 Ladies and gentlemen, this has been a short trial
3 and yesterday afternoon you heard the lawyers marshal the
4 evidence for you in considerable detail. I am not going to
5 review all that again because, as I mentioned to you, it
6 is not what the lawyers say or what I say, it is what you,
7 the jury, remember and recall.

8 I thought perhaps it might help you if I
9 indicated very briefly the contentions of the parties,
10 as I understand them, in the thought that might refresh
11 your recollection. In any event, remember that it is your
12 recollection and not mine that controls.

13 There are four counts in all in this indictment
14 which you will consider. The first count charges con-
15 spiracy. I will call that the conspiracy count. Here the
16 government contends that the defendants Rogers and Marciano
17 were members of a conspiracy to unlawfully, wilfully and
18 knowingly hijack trucks which were moving in interstate
19 commerce and to deliver these trucks in New Jersey to
20 Carroll, McCluskey and Marciano so that they could dispose
21 of the contents.

22 The government contends that in furtherance of
23 this conspiracy on December 15, 1972, Boyd, Dixon and
24 Copper hijacked the Arrow Transportation Company truck
25 containing some 645 cases of canned ham, if my recollection

1 jwp

2 serves me, which truck was going from New York City to
3 Pawtucket, Rhode Island.

4 And then on January 22, 1973, that the defendants
5 Rogers and Boyd and Dixon hijacked a truck belonging to
6 the Connecticut Seafood Transportation Company containing,
7 as I recall it, some 30,000 to 40,000 pounds of frozen fish,
8 and the truck was going from New York City to someplace in
9 Connecticut.

10 You will hear a lot during the course of this
11 about interstate commerce. That is why this case is in
12 this court. Well, any trip or projected trip from New
13 York to another State, whether it is New Jersey or whether
14 it is Connecticut is interstate commerce.

15 On the alleged hijacking on January 22, 1973, the
16 government contends that after the truck was hijacked it
17 was taken over to New Jersey and with the help of the
18 defendant Marciano turned over to Carroll and McCluskey
19 at a diner on the other side of the Holland Tunnel.

20 In connection with count 1, as I recall it --
21 and again it is your recollection that controls -- the
22 government contends that in early December, 1972, Boyd,
23 Dixon and Copper met Carroll and McCluskey at the Two Guys
24 Bar in New Jersey and it was arranged that Boyd, Dixon and
25 Copper would notify Carroll when they had a truck, when

2 they hijacked a truck, presumably, and that at this meeting
3 Carroll introduced the defendant Marciano to Boyd, Dixon
4 and Copper and told them that he would take the phone calls
5 when Carroll was not at the bar.

6 And the government contends that following this
7 meeting at the Two Guys Bar again in December, '72, Boyd,
8 Dixon and Copper made a number of trips around New York
9 City looking for trucks to hijack and that thereafter on
10 December 15th they did in fact hijack the Arrow truck and
11 that that truck they left at the New Jersey diner.

12 As I recall it, Copper testified he drove the
13 truck. It was too high to go through the tunnel and he
14 went across the Verrazano Bridge, if I remember correctly.
15 And that he left this New Jersey diner in accordance with
16 defendant Marciano's telephone instructions to him; and
17 that after that there was some testimony about the money
18 that was paid to Boyd, Dixon and Copper. I think there
19 may have been two payments. Anyway, as I recall, they
20 received a total of \$3600 and it was split three ways.

21 Then in January, 1973, as I recall it, the
22 government contends that this time Rogers, Boyd and Dixon
23 were looking around town to see if they could find a shrimp
24 and lobster truck and the government contends that on
25 January 22, 1973, Rogers, Boyd and Dixon did hijack the

1 jwp

2 Connecticut Seafood truck and that Rogers drove it to New
3 Jersey where it was delivered at the diner. I think it was
4 the same diner.

5 On this occasion they contend that Boyd tele-
6 phoned Marciano, defendant Marciano, from the diner and
7 told him where they had the truck and that shortly there-
8 after Carroll came to the diner and picked it up.

9 With respect to this alleged hijacking, there
10 also was evidence that following the delivery of the trucks
11 the money was paid in New York. I think it was tossed out
12 of the car in which McCluskey and Carroll had been traveling.
13 And it amounted, as I recall the evidence, to some \$4000
14 or \$5000.

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1 Those are the Government's contentions
2 in the conspiracy count.

3 In Count 3 -- and I will review these with
4 you more specifically in a little while -- the Govern-
5 ment contends that defendant Marciano aided and abetted
6 Carroll and McCluskey in the receipt of the Arrow truck
7 which was hijacked on December 15, 1972, and that the
8 defendant Marciano knew that the truck and the contents
9 had been stolen.

10 In Count 4 the Government contends that the
11 defendant Rogers participated in the hijacking of the
12 Connecticut seafood truck on January 22, 1973 with the
13 frozen fish, and I think I have reviewed that with you;

14 And finally in count 5 the Government
15 contends that the defendant Marciano aided abetted
16 Carroll -- and I will tell you what I mean by "aided
17 and abetted" a little later on -- in receiving the
18 truckload of frozen fish, which was the truck that was
19 stolen or hijacked from the Connecticut seafood company
20 on January 22, 1973.

21 Now, of course, each of the defendants,
22 Mr. Rogers and Mr. Marciano, deny all of these con-
23 tentions. They deny that they ever conspired with

24

25

2 Boyd, Dixon or Copper to hijack trucks or their
3 contents, or that they conspired with them to receive
4 the contents of the hijacked trucks in New Jersey.

5 Defendant Rogers denies that he participated
6 in the January 22, 1973 hijacking, and he denies being
7 present when and if it occurred.

8 He denies that he drove the truck as
9 contended by the Government from New York to New Jersey.

10 The defendant Rogers testified, as I recall
11 it, that he knew Boyd and Dixon -- sometimes, I think
12 he said they had drinks together -- and he had a
13 casual acquaintance with Copper. I think he said
14 they all lived in the same neighborhood. And the
15 defendant Rogers contends that the testimony of Boyd,
16 Dixon and Copper given in this case was not credible
17 and was given only to help themselves.

18 The defendant Marciano denies he had any
19 participation in the conspiracy, and he denies that
20 he assisted or aided and abetted Carroll and McCluskey
21 in the receipt of the goods and their contents which
22 had been hijacked.

23 He testified that he was employed during
24 this period as a bartender at the Two Guys Bar, that
25 his hours were between 10 and 3 p.m., as I recall it,

2 and that while so employed he would receive calls from
3 people who might wish to talk to Carroll or to other people
4 who frequented the bar.

5 He also testified, as I recall it, that there
6 were a number of people besides himself called "Mike" who
7 frequented the Two Guys Bar.

8 And the defendant Marciano also contends that
9 the testimony of Boyd, Dixon and Copper was not credible
10 and was given by them only to help themselves.

11 Now so much for the contentions. Now, mind
12 you, they were very brief, and it is not what I say; it
13 is what you remember that is important.

14 Now, ladies and gentlemen, there are two
15 Federal statutes involved here. The first one is Section
16 659 of Title 18 of the United States Code which provides
17 in relevant part:

18 "Whoever steals or unlawfully takes, carries
19 away" -- well, a hijacking would encompass all of
20 those things, I think we all understand that --
21 "a motor truck with intent to convert to his own
22 use any goods or chattels moving as or which are a
23 part or which constitute an interstate shipment is
24 guilty of a crime."

25 Then the statute, the same section, goes on to

23a

1 ss4

2 say:

3 "Whoever buys or receives or has in his
4 possession any such goods or chattels, knowing the
5 same to have been stolen, is guilty of a crime."

6 So on the first section it means that anybody
7 who hijacks a truck moving in interstate commerce is guilty
8 of a crime.

9 And the second part is that whoever takes that
10 truck or the contents, knowing that the truck has been
11 stolen, is guilty of a crime.

12 Then the second statute involved is Section 371
13 of Title 18 of the United States Code. This is the con-
14 spiracy statute which is the subject of the first count of
15 the indictment.

16 That provides that if two or more persons
17 conspire either to commit any offense against the United
18 States--- now anybody who does these things, either hijacks
19 trucks or receives goods from these trucks knowing that
20 they were stolen, is committing an offense against the
21 United States. So the conspiracy statute says that if
22 two or more persons conspire to commit these offenses, and
23 one or more of such persons does any act to effect the
24 object of the conspiracy, each member of the conspiracy is
25 guilty of a crime.

2 So you will observe -- and that's why Count 1
3 is there -- that a conspiracy to violate the statute that
4 I read to you is a crime separate and apart from the actual
5 violation.

6 And so I will turn first to the conspiracy
7 count, which is Count 1.

8 Now I will remind you again that the indictment
9 which I am referring to are merely the charges and not
10 evidence.

11 Now, Count of the indictment reads asfollows:

12 "The grand jury charges:

13 "1. From on or about the 15th day of August
14 1971, up to and including the date of the filing of
15 this indictment" -- there is nothing magic about
16 these dates. As I recall the testimony here, it
17 was December 1972 and January 1973, and that's
18 within this period, and there is nothing magic about
19 the 15th day of August of 1971 or the date of the
20 filing of the indictment. Then the indictment
21 goes on:

22 "In the Southern District of New York."

23 Now, that's important. The Southern District
24 of New York encompasses Manhattan and the Bronx. There
25 has been a lot of testimony about Manhattan and the Bronx.

1 ss6

2 "And elsewhere" -- "and elsewhere" here means
3 New Jersey; I think that's the only other place about
4 which we heard testimony --

5 "Charles Copper, also known as 'CJ', Leon
6 Rogers, Michael Marciano, Thomas Carroll and Vincent
7 McCluskey, the defendants" -

8 now, here, of course you only consider the defendants
9 Rogers and Marciano, although you heard testimony about
10 some of these other people, and draw no inference, either
11 favorable or unfavorable with respect to Rogers and
12 Marciano by reason of the fact that they are the only
13 ones who are on trial before you and not the others --
14 the indictment goes on:

15 " -- the defendants, unlawfully, wilfully
16 and knowingly did combine, conspire, confederate
17 and agree together, and with each other, and with
18 other persons to the grand jury known and unknown,
19 to commit offenses against the United States,"
20 and then they cite that statute that I read to you.

21 "2. It was part of said conspiracy that
22 Charles Copper, also known as CJ, Leon Rogers, and
23 certain of their co-conspirators would unlawfully,
24 wilfully and knowingly steal and take and carry
25 away from a motor truck, with intent to convert

2 to their own use, goods of a value greater than
3 \$100 which were moving as, which were part of, and
4 which constituted an interstate shipment of freight
5 express.

6 "3. It was further a part of said conspiracy
7 that Charles Copper, also known as CJ, Leon Rogers,
8 and certain of their co-conspirators would unlaw-
9 fully, wilfully and knowingly take, carry and deliver
10 said goods of a value greater than \$100 to defendants
11 Michael Marciano, Thomas Carroll and Vincent
12 McCluskey.

13 "4. It was further part of said conspiracy
14 that defendants Michael Marciano, Thomas Carroll and
15 Vincent McCluskey would unlawfully, wilfully and
16 knowingly buy, receive, have in their possession,
17 sell and dispose of the aforesaid goods of a value
18 greater than \$100, knowing said goods to have
19 been stolen."

20 Now you can see from this, ladies and gentlemen,
21 that the defendants Rogers and Marciano are charged with
22 being members of a conspiracy to commit offenses against the
23 United States, that is, hijacking a truck and receiving the
24 trucks and their contents knowing that they had been
25 stolen and in deliberating on the conspiracy charge please

2 consider each of the defendants separately.

3 There are three elements which the Government
4 must prove beyond a reasonable doubt as to each of the
5 defendants:

6 First of all, the Government must prove beyond
7 a reasonable doubt that there was a conspiracy here of at
8 least two people -- it takes two to conspire -- and the
9 people mentioned here have been Coppers, Rogers, Marciano,
10 Carroll and McCluskey -- if you find that there was a
11 conspiracy of at least two of these people to commit these
12 offenses against the United States to hijack trucks or to
13 receive the trucks and the goods and their contents - that's
14 the first element.

15 The second element is that the defendant you
16 are considering knowingly and wilfully became a member of
17 the conspiracy knowing what its objects were.

18 And the third element which the Government
19 must prove beyond a reasonable doubt is that at least one
20 of the overt acts set forth in the indictment -- I will
21 read those to you in a few minutes -- was committed by one
22 of the members of the conspiracy and that it was committed
23 in furtherance of the conspiracy.

24 So going back to the first element: Was there
25 a conspiracy here? What is a conspiracy? Well, a con-

1 ss9

2spiracy is a partnership in crime. It is a combination
3of two or more people to violate the law. Of course, the
4Government need not prove that there was any formal or
5written agreement between the parties to establish a con-
6spiracy. People who conspire to violate the law are
7not likely to put their arrangements in writing. But,
8on the other hand, you must find from the evidence that two
9or more people came to an understanding for the purpose
10of accomplishing an unlawful purpose - in this case, hijack-
11ing trucks and receiving the goods and taking them from
12them. And a conspiracy being a partnership in crime,
13every member of the conspiracy is responsible for what any
14other member of the conspiracy may do in furtherance of
15the conspiracy.

16 So here, first of all, consider, does the
17 evidence show here that the Government has proved beyond
18 a reasonable doubt that there was a conspiracy?

If you so find then you reach the second
19 element: Was the defendant you are considering -- and I
20 told you to consider Rogers and Marciano separately -- a
21 member of that conspiracy?
22

Now here you may not infer that a defendant was
a member of the conspiracy because he may have known some
of these other people or that he may have been present on

2 some occasion with some of these other people, or even
3 that he may have known that the other people were conspir-
4 ing to hijack a truck.

5 You may not find him to be a member of the
6 conspiracy unless you find on the evidence that he knowingly
7 and wilfully joined the conspiracy, knowing of its purpose
8 to hijack trucks and to receive goods.

9 So ask yourselves, ladies and gentlemen, on
10 the second element: Did the defendant you are considering
11 knowingly and wilfully join the conspiracy with the knowl-
12 edge that his acts were a significant part in the enter-
13 prise which the conspiracy was designed to carry out?
14 And here consider the evidence as to the defendant's own
15 acts, his own statements, his own conduct, and consider
16 the evidence as to the acts and statements of others which
17 you find bear on the issue of whether or not the defendant
18 you are considering was a member of the conspiracy.

19 Now, ladies and gentlemen, the guilt of a
20 conspirator is not measured by the extent of his participa-
21 tion or by whether his role might have been a major one
22 or a minor one. He is equally guilty if you find that
23 he did participate in a conspiracy. But he must have
24 known the purpose of the conspiracy here to hijack the
25 trucks and to receive the stolen goods.

1 sls

2 Now, of course, the success of the conspiracy
3 is not something that you need to consider. It is quite
4 immaterial whether a conspiracy succeeds or not; a
5 participant is guilty whether or not it succeeds.

6 In applying these standards, ladies and
7 gentlemen, if you should find that the Government has not
8 proved beyond a reasonable doubt that there was a con-
9 spiracy here, or if you find it has proved that there was
10 a conspiracy but has not proved that the defendant you are
11 considering was a member of the conspiracy, then you must
12 find that defendant not guilty on the conspiracy count,
13 Count 1.

14 But, on the other hand, if you find that
15 there was a conspiracy here and that the Government has
16 proved beyond a reasonable doubt that the defendant you
17 are considering knowingly and wilfully joined that con-
18 spiracy, then you reach the third element which the Govern-
19 ment must prove beyond a reasonable doubt, and that is
20 whether one or more of the members -- it doesn't have to
21 be the defendant you are considering because a conspiracy
22 is a partnership in crime; it could be any member of the
23 conspiracy -- committed at least one of the overt acts
24 charged in the indictment in the Southern District of New
25 York - Manhattan, Bronx - and that the act was in further-

2 ance of the conspiracy.

3 Now, the indictment here, ladies and gentlemen,
4 contains 22 overt acts, and as I read these overt acts I
5 think you will recall that most of these were matters
6 that were testified to by Mr. Boyd, in his testimony.

7 The indictment reads:

8 "In furtherance of said conspiracy and to
9 effect the objects thereof, the following overt acts
10 among others were committed in the Southern District
11 of New York, and elsewhere:

12 "1. In or about December 1972, Charles
13 Copper, Carlton Boyd and James Dixon traveled from
14 New York City to the Two Guys Bar in North Bergen,
15 New Jersey" -- I don't know if it is North Bergen;
16 it seems to me it was Secaucus, but I guess it
17 doesn't make any difference; I guess they are
18 around the same place --

19 "2. In or about December, 1972, Carlton Boyd
20 talked with Michael Marciano, Thomas Carroll and
21 Vincent McCluskey at the Two Guys Bar in North
22 Bergen, New Jersey."

23 Now, I want to mention that overt act occurred
24 in New Jersey, not in the Southern District of New York.
25 So even if you found that the Government has proved that

2 this happened in New Jersey you may not consider them
3 having proved an overt act occurring in the Southern
4 District of New York.

5 Then this goes on in like vein - and I don't
6 know, I don't think I am going to read all of these things
7 to you; I will send you a copy of this and you can read
8 it, but as I recall it, in all events, they were testified
9 to by Mr. Boyd.

10 And with respect to the overt acts you must
11 find that at least one of these 22 overt acts was proven
12 by the Government to have occurred beyond a reasonable
13 doubt.

14 You must find further that it was committed
15 in the Southern District of New York, Manhattan or the
16 Bronx, and finally you must find that it was committed
17 in furtherance of the conspiracy to hijack trucks or to
18 receive the stolen goods.

19 Now, of course, an overt act may be nothing
20 more than a telephone conversation; it may be a trip some-
21 where; it may be a meeting on the street; it doesn't have
22 to be a crime of itself. But you must find that what-
23 ever it was it was something that was done in furtherance
24 of this particular conspiracy.

25 So summarizing the conspiracy count, ladies

2 and gentlemen, the Government must prove beyond a reasonable
3 doubt here first that there was a conspiracy; second,
4 that the defendant you are considering -- and you consider
5 them separately -- knowingly and wilfully joined that
6 conspiracy, knowing of its unlawful purpose; and, third,
7 that at least one of the overt acts stated in the indictment
8 was committed in the Southern District of New York, not
9 necessarily by the defendants you are considering, but
10 it was committed by a member of the conspiracy and in
11 furtherance of the conspiracy.

12 All right, ladies and gentlemen, so much for
13 the conspiracy count.

14 Then I would like to turn to Count 4. This
15 is a little out of order. The counts you have are 1, 3,
16 4 and 5, but I think it would be helpful if I turn to
17 Count 4 which involves only the defendant Rogers; does
18 not involve the defendant Marciano.

19 Count 4 reads as follows:

20 "The grand jury further charges:

21 "On or about the 22nd day of January, 1973 in
22 the Southern District of New York, Leon Rogers,
23 the defendant, unlawfully, wilfully and knowingly,
24 and with intent to convert to his own use, did
25 steal, take and carry away from a Connecticut

2 seafood company motor truck goods of a value greater
3 than \$100, to wit, 20,000 pounds of assorted frozen
4 fish, which were moving as, which were part of, and
5 which constituted an interstate shipment of freight
6 and express."

7 And, of course, I have reviewed with you the
8 contentions regarding this count. This is the alleged
9 second hijacking of January 22, 1973.

10 To find the defendant Rogers guilty of the
11 crime charged in this count the Government must prove to
12 you beyond a reasonable doubt each of the following
13 elements:

14 First, that on or about January 22, 1973, a
15 cargo containing the frozen fish in the Connecticut seafood
16 truck was part of an interstate shipment of freight from
17 New York City to Connecticut - and I think I have gone over
18 what I meant by interstate shipment and interstate commerce.
19 I think also in the evidence on this there were certain
20 shipping documents that were introduced in evidence
21 indicating where the truck was going to go.

22 The Government has got to prove that it was
23 going in interstate commerce, but it doesn't have to prove
24 that the defendant Rogers knew that the truck was moving
25 in interstate commerce. That isn't necessary.

1 sls

2 The second element which the Government must
3 prove is that the value of the fish was greater than a
4 hundred dollars. That is, the contents of the truck.
5 Well, there was a certain amount of evidence on that.
6 As I recall it, these were pretty big trucks, and I think
7 you can probably pretty much use your common sense on that
8 and determine on the evidence whether they were worth more
9 than a hundred dollars. I would assume so; I don't
10 know, but I would assume so myself.

11 Third, the Government must prove beyond a
12 reasonable doubt that the defendant Rogers wilfully and
13 knowingly hijacked the Connecticut seafood truck carrying
14 the frozen fish.

15 Now, of course, here the Government need not
16 prove that Rogers removed the fish. It's sufficient if
17 they prove that he took the truck, that he took the truck
18 and stole the truck and its contents. That is sufficient.

19 And what do I mean by stealing a truck?
20 Well, hijacking is stealing. If you find that the
21 defendant was seeking to take the truck to deprive the
22 true owners of the fish because he wanted to take it for
23 another purpose, that was stealing the truck.

24 And the fourth element which the Government
25 must prove beyond a reasonable doubt is that the defendant's

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2 intention in stealing the truck was to convert the fish
3 to his own use.

4 Well, all that means is that he was taking it
5 for his own interest, not the owner's interest. He was
6 taking it either to sell it himself or to get somebody else
7 to take it over and sell it -- "fencing" I think it's
8 called -- and that he was going to make some money out
9 of it. He had a financial interest.

10 Now I would like to go back for one second in
11 connection with that count - and this applies also to the
12 other two substantive counts which are 3 and 5 which you
13 will consider after you have reached a verdict on the
14 conspiracy count.

15 If after considering the conspiracy count
16 you should find that the defendant Rogers, in connection
17 with Count 4, or the defendant Marciano in connection with
18 Counts 3 and 5, was a member of that conspiracy -- in other
19 words, if you find him guilty on the conspiracy count --
20 and you find that the hijackings and the receipt of stolen
21 goods, which are the subjects of these substantive counts,
22 were committed by a member of the conspiracy and in further-
23 ance of the conspiracy, then you may find that the defend-
24 ants you are considering, Rogers in Count 4 and Marciano
25 in Counts 3 and 5, guilty under those counts even though

2 you find that Rogers did not actually do the things charged
3 in Count 4 or that Marciano did not actually do the things
4 in the other two counts. Because, as I told you here,
5 a conspiracy is a partnership in crime, and therefore every
6 member of the conspiracy is responsible for what any other
7 member of the conspiracy may do in furtherance of the
8 conspiracy.

9 And, finally, turning to Counts 3 and 5, which
10 I will now read to you, and which as far as you are
11 concerned involve only Mr. Marciano, Count 3 reads:

12 "The grand jury further charges:

13 "That on or about the 15th day December, 1972,
14 in the State of New Jersey, Michael Marciano,

15 Thomas Carroll and Vincent McCluskey" --

16 and, again, ladies and gentlemen, you only have to consider
17 Michael Marciano, and please draw no inferences favorable
18 or unfavorable with regard to him because Carroll and
19 McCluskey are also named here --

20 "the defendants, unlawfully, wilfully and knowingly
21 did buy, receive and have in their possession goods
22 of a value greater than \$100, to wit, 645 cases of
23 'Adria' canned hams, which had been unlawfully stolen,
24 taken and carried away from a motor truck in inter-
25 state commerce in the Southern District of New York,

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2 knowing the said goods to have been stolen and
3 unlawfully taken and carried away from said motor
4 truck."

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3 Count 5 reads -- that is the December trans-
4 action --- count 5:

5 "The grand jury further charges on or about
6 the 22nd day of January, 1973, in the State of New
7 Jersey, Michael Marciano, Thomas Carroll and Vincent
8 McCluskey, the defendants, unlawfully, wilfully and
9 knowingly did buy, receive and have in their possession
10 goods of a value greater than \$100, to wit 20,000
11 pounds of assorted frozen fish which had been un-
12 lawfully stolen, taken and carried away from a motor-
13 truck moving in interstate commerce in the Southern
14 District of New York, knowing the said goods to have
15 been stolen and unlawfully taken and carried away
16 from said motor-truck."

17 So, in effect, the defendant Marciano is charged
18 in these counts with the fencing operation, not the hijack-
19 ing, but the receiving of the goods, the fencing of the
20 goods.

21 You may not find him guilty under counts 3 and 5
22 unless you find the government has proved the following
23 elements beyond a reasonable doubt:

24 First, that the goods, the canned ham, I guess,
25 in count 3, and the frozen fish in count 5, were moving in
interstate commerce. I just covered that.

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2 As I recall it, the Arrow truck was going from
3 New York to Pawtucket and the seafood truck was going from
4 New York to Connecticut, and I told you that was interstate
5 commerce. That is the first element.

6 The second element is the value of the goods
7 was greater than \$100. Well, I think we had some
8 testimony on that, I talked about that. I don't think that
9 there is a serious question about that element.

10 The third element which the government must prove
11 beyond a reasonable doubt on each of these counts 3 and 5
12 is that the trucks and their contents, the fish or the ham,
13 were stolen. Well, I have been over that with you, what we
14 mean by stolen here.

15 The fourth element, which the government must
16 prove beyond a reasonable doubt, is that the defendant took
17 the goods, took receipt of the goods knowing that the goods
18 were stolen. He doesn't have to know that they were stolen
19 from an interstate shipment, but the government must prove
20 that the defendant Marciano knew that the goods had been
21 stolen.

22 In these two counts, ladies and gentlemen --
23 and the evidence supports that -- the government is not
24 contending that the defendant Marciano actually received
25 the goods. There is no evidence that he did. The

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2 government is contending here that -- and, of course, Mr.
3 Marciano denies it -- that the defendant Marciano aided
4 and abetted Carroll and McCluskey.

5 Remember there was evidence that Carroll and
6 McCluskey, that Carroll would pick up the trucks, that
7 Carroll and McCluskey would deliver the money. And the
8 government contends here that Marciano really aided and
9 abetted Carroll and McCluskey in receiving the goods.

10 In considering whether or not the government has
11 proved this, you should consider another Federal statute
12 which is Section 2 of Title 18 of the United States Code,
13 which provides that ".... whoever commits an offense
14 against the United States, or aids and abets in its com-
15 mission is punishable as a principal."

16 Now, all that means is that somebody who helps
17 somebody else commit a crime is equally guilty of that crime.
18 That is what the government is charging here. And, of
19 course, the defendant denies it.

20 And all aiding and abetting means is to assist,
21 to help in the commission of a crime.

22 And here before you can find the defendant
23 Marciano guilty under either of these counts you must find
24 that the government has proven beyond a reasonable doubt
25 that he did aid and abet, assist Carroll and McCluskey.

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You must find that he knew what the purpose of the venture was and that was to receive the goods taken from hijacked trucks and to dispose of them.

You must find that the defendant Marciano knowingly helped Carroll and McCluskey. And here, as I recall it, the government contends that in connection with the December 15, 1973, hijacking that Marciano told Cooper to take the Arrow truck to a diner in New Jersey.

And then also in count 5 the government contends that Marciano relayed to Carroll and McCluskey the information he obtained from Boyd that they had gotten the truck and were waiting at this diner on the other side of the Holland Tunnel. That is as I recall the evidence, but it is your recollection that controls.

Here again it is not enough the defendant Marciano may have known Carroll and McCluskey were engaged in this operation and were receiving stolen goods. It is not enough that he might have been present when they were doing it, or when they discussed the matter. Here you must find that he knowingly and wilfully participated with them in this operation.

And here again I remind you, as I mentioned to you a while ago, if you find that Marciano is a member of the conspiracy in the conspiracy count, then you may find that

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2 he did knowingly and wilfully participate with the others
3 in the receipt of the stolen goods.

4 However, if you find that he was not a member
5 of the conspiracy, you may only find him guilty of aiding
6 and abetting, if you find that he knowingly and wilfully
7 participated in the receipt of the stolen goods, that he
8 sought to make the venture his own in some way, that he had
9 a stake in the outcome financially or otherwise.

10 Now, you see from this, ladies and gentlemen,
11 that an essential element in all these counts is the defendant's
12 knowledge and intention. I have repeated a number of
13 times that in a conspiracy count you must find the defendant
14 was acting knowingly, wilfully and unlawfully. And the
15 same is true of these other counts: did he have the criminal
16 intent?

17 How do you determine whether or not he had the
18 criminal intent? Well, an act is done knowingly and wilfully
19 if it is done voluntarily and purposely. An act is done
20 wilfully, knowingly and unlawfully if it is done with an
21 evil motive or purpose such as to violate the law.

22 However, an act is not done wilfully, knowingly
23 and unlawfully if it is done by mistake or by carelessness
24 or by other innocent reason.

25 Obviously it is impossible to prove exactly what

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2 a defendant knew or what his intentions were on a particular
3 occasion. We cannot look into a defendant's mind and see
4 what knowledge he had at the time to determine his specific
5 intentions. These are matters that you, the jury, may
6 determine after a careful consideration of the facts and
7 circumstances surrounding the transactions.

8 The knowledge and intentions of a defendant may
9 only be understood when put in the context of the circum-
10 stances surrounding his act and the inferences which you,
11 the jury, find may be reasonably drawn therefrom.

12 You might ask yourselves whether these transactions
13 appear to be normal or abnormal, whether they were open or
14 surreptitious, whether you think the background of the
15 defendant made it likely or unlikely that he fully under-
16 stood what he was doing, whether you think the defendant had
17 a motive, whether you think he had a financial or other
18 interest in the outcome.

19 These are the kinds of questions that you should
20 ask yourselves in determining whether a defendant had the
21 criminal intent. And, of course, they are not the only
22 ones and I don't suggest any answers to these questions
23 because, after all, ladies and gentlemen, in your own daily
24 affairs you are continually called upon to use your own
25 common sense and experience to determine from the actions

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2 or statements of others what their real intentions and
3 purposes are. And please do the same thing here with
4 respect to each of these defendants.

5 Now, you recall, I think it was yesterday at the
6 conclusion of the government's case, there was introduced in
7 evidence a record indicating that the defendant Marciano
8 had been convicted in New Jersey of possession of some stolen
9 air conditioners. Do you remember that? And I think when
10 he took the stand he testified that he had pled guilty in
11 that case.

12 Now, of course, he is not charged here with any-
13 thing to do with air conditioners. This involves fish and
14 hams, as I recall it. Therefore, you may not consider
15 this evidence in determining whether or not Mr. Marciano
16 did any of the acts here, except in considering Mr. Mar-
17 ciano's knowledge and intentions.

18 As I have now instructed you, you may consider
19 this evidence only insofar as you find it bears on his
20 knowledge and intentions at the time of the actions which
21 he is charged with in this case.

22 The law recognizes two types of evidence, ladies
23 and gentlemen - direct evidence and circumstantial evidence.

24 Direct evidence is testimony of a witness who
25 personally observed a transaction or participated in the

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2 activity he is describing.

3 Circumstantial evidence consists of circum-
4 stances from which the jury may infer by a process of
5 reasoning certain facts that are sought to be established
6 as true.

7 A classic example of circumstantial evidence is
8 this:

9 They say we may have a thunderstorm this afternoon,
10 and you might go home and your coat might be wet when you
11 arrive home and somebody is watching television and looks
12 at your wet coat and says, "It's raining outside." They
13 haven't looked outside, they have looked at you and see
14 your wet coat and by a process of reasoning they conclude
15 it is raining outside. That is circumstantial evidence.

16 Of course, there is quite a lot of circumstantial
17 evidence in this case, the circumstances surrounding these
18 various transactions.

19 And circumstantial evidence is good evidence,
20 just as good as direct evidence. But whether the evidence
21 is circumstantial or direct the government must prove its
22 case to you beyond a reasonable doubt.

23 Of course, different inferences may be drawn
24 from the evidence, whether it is direct or circumstantial.
25 Here the government will ask you to draw one set of in-

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2 ferences while the defendants will ask you to draw another.
3 It is for you, the jury, to decide what inferences you will
4 draw, what facts you find to have been proven.

5 However, remember that any inferences you draw
6 must be reasonable inferences based on the evidence or
7 lack of evidence.

8 Of course, you, ladies and gentlemen, are the
9 exclusive judges of the credibility of the witnesses who
10 appeared before you, and there is certainly a sharp dif-
11 ference between the witnesses here. They can't all be
12 telling the truth; no question about that.

13 I observed you. You gave careful attention to
14 the testimony of the witnesses, and you will subject the
15 testimony of all these witnesses to the same standard whether
16 they were called by the government or the defendants.

17 I think one of the lawyers mentioned that it is
18 the quality of the testimony, not the quantity that is im-
19 portant, the testimony that you believe. And certainly
20 in judging credibility you will consider the support or lack
21 of support that a witness's testimony receives from other
22 evidence and circumstances brought out during the trial.

23 And here again, ladies and gentlemen, in con-
24 sidering the credibility of these witnesses, please use
25 your plain everyday common sense. How did they impress you?

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2 Did you think they were testifying frankly, candidly and
3 fairly?

4 So here again, ladies and gentlemen, apply your
5 common sense and experience just as you do when you have to
6 determine an important matter in your own life, when you
7 have to decide if you have been given a true picture of a
8 given situation.

9 You will consider, I would think, a witness's
10 demeanor, background, his occupation or business, his
11 prior criminal record, if any.

12 You consider his possible bias, means of informa-
13 tion, the accuracy of his recollection, and you consider
14 whether you find his testimony supported or whether you find
15 it to be contradicted by other testimony or circumstances
16 which you believe to be credible.

17 You will consider whether a witness has an
18 interest in testifying. For example, we had an FBI Special
19 Agent Smoot. He testified. He is a law-enforcement
20 officer. He has an interest in prosecuting people he thinks
21 violated the law.

22 Of course, that is an interest which you may con-
23 sider. It doesn't mean that a witness will falsify or
24 color his testimony because he has an interest. It is
25 merely a factor for you, the jury, to consider.

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2 Here both of the defendants - Mr. Rogers and Mr.
3 Marciano - testified at the trial. They testified
4 voluntarily. They didn't have to. Obviously each of them
5 has a vital interest in this case and their interest is
6 certainly one of the matters which you should consider in
7 the credibility which you give their testimony and you
8 should consider their testimony very carefully. But here
9 again you may conclude that the defendant is telling you
10 the complete truth despite his interest in the outcome.

11 You should certainly consider with great care the
12 testimony of Boyd, Dixon and Copper. As I recall it, Copper
13 told us he pled guilty to this very conspiracy.

14 Boyd and Dixon told us about the hijacking they
15 were engaged in, and in a sense they were accomplices in
16 hijacking trucks.

17 All of them testified they had trouble with the
18 government and that they were hopeful that their testimony
19 might help them obtain leniency of some kind.

20 So consider their testimony very carefully,
21 ladies and gentlemen. And that is particularly true if
22 you find that their testimony was not corroborated or
23 supported by other evidence.

24 However, the testimony of these people is suf-
25 ficient to convict the defendant if you believe it and it

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2 convinces you of the guilt of the defendant you are con-
3 sidering beyond a reasonable doubt. But in reaching that
4 conclusion be sure to take into account whatever motive
5 you find the defendant had in testifying the way he did
6 and subject the testimony of each of these witnesses to
7 close and searching scrutiny.

8 As I recall it yesterday, defendant Marciano
9 called two character witnesses - I think the Reverend Cady
10 and Sergeant Messina, if that is what his name was, from
11 the Secaucus Police -- who testified as to Mr. Marciano's
12 reputation for honesty and integrity.

13 Well, this evidence may be considered by you with
14 all of the other evidence in determining Mr. Marciano's guilt
15 or innocence and should be given such weight as you think it
16 is entitled to.

17 Evidence of a defendant's good reputation, when
18 considered with all of the evidence, may be sufficient to
19 raise a reasonable doubt in your mind as to the defendant's
20 guilt. But, on the other hand, if after considering all
21 of the evidence with respect to Mr. Marciano, including
22 the testimony I have just mentioned, you find him to be
23 guilty beyond a reasonable doubt, then, of course, it is
24 your duty to find him guilty, notwithstanding the testimony
25 as to his reputation.

2 I have indicated to you -- and I will send the
3 indictment in to you, ladies and gentlemen -- a **separate**
4 crime or offense is charged in each of the four counts
5 of the indictment. You will consider each count and the
6 evidence applicable to them **separately** and as to each
7 defendant.

8 The fact that you may find the defendant guilty
9 or not guilty on one count does not control your verdict
10 with respect to the other counts.

11 You will have the right to see any and all of the
12 exhibits which have been introduced into evidence, but
13 please let me know by telling the marshal.

14 As you deliberate, ladies and gentlemen, remember
15 that jury deliberation is one in which everybody expresses
16 his views and exchanges views. Don't be afraid to change
17 your original view because of pride of opinion or stubborn-
18 ness if for any reason at all you are convinced after
19 talking to your fellow jurors that your original views
20 were wrong.

21 But, on the other hand, ladies and gentlemen,
22 if you have an honest conviction about it, never surrender
23 that, never surrender your honest conviction here because
24 you differ with your fellow jurors, or because you are out-
25 voted. Never surrender your conscientious conviction..

2 You will seek to arrive at a verdict here con-
3 sistent with the conscientious convictions of each and every
4 one of you.

5 It is obviously important to both the government
6 and each of these defendants that this case be decided by
7 you.

8 This being a criminal case, ladies and gentlemen,
9 your verdict must be a unanimous verdict, a verdict reflect-
10 ing the conscientious conviction of each and every one of
11 you.

12 Should you find that the defendant you are con-
13 sidering is not guilty, do not hesitate for any reason to
14 render a verdict of not guilty. But, on the other hand,
15 if you find that the law has been violated by the defendant
16 you are considering as charged, you must not hesitate to
17 render a verdict of guilty because of sympathy or any other
18 reason at all.

19 Please do not consider the question of possible
20 punishment in case you find the defendant guilty. Please
21 don't let this enter into your deliberations in any way.
22 You must not allow consideration of possible punishment
23 to affect you or make you seek to avoid the performance
24 of any unpleasant task.

25 I am sure, ladies and gentlemen, that if you

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2 listen to the views of your fellow jurors and if you apply
3 your own common sense you will reach a fair verdict here.

4 Remember that your verdict must be rendered
5 without fear, without favor, without prejudice and without
6 sympathy.

7 Will counsel come forward, please?

8 (At the side bar.)

9 MR. LEVNER: I have nothing at all, Judge, to
10 add.

11 MR. DAVIE: Nothing, Judge.

12 THE COURT: Nothing?

13 MR. SCHATTEN: The only thing I would like to
14 cover would be the government's contention in the indictment
15 charging Boyd and Dixon were co-conspirators. I think the
16 Court in effect pointed that out by calling them accomplices,
17 but I would prefer "co-conspirators."

18 THE COURT: Do you fellows care?

19 MR. LEVNER: Most certainly. I think you covered
20 every conceivable point in the charge.

21 THE COURT: He wants me to say that Boyd and
22 Dixon were co-conspirators. I called them accomplices.

23 I think he is trying to help you. I dont know that it
24 makes much difference.

25 MR. LEVNER: I will waive the help, Judge.

2 THE COURT: How about you? Do you care about
3 that?

4 MR. SCHATTEN: Your Honor, it's all right.

5 MR. DAVIE: I don't think it makes any difference.

6 THE COURT: All right. Thank you very much,
7 gentlemen.

8 (In open court.)

9 THE COURT: Mr. Zapata, we have the same luck
10 again. I am awfully sorry. Twice you had to sit
11 through and listen to me. That is quite a burden.

12 And, Mrs. Maiorelli, yes, you two jurors that have
13 been here to this point, it is my pleasure to excuse you
14 and to thank you very much.

15 You must realize how important it was. Now,
16 if that subway had been a little worse this morning we
17 sure would have needed you.

18 Thank you very much.

19 What are their instructions?

20 THE CLERK: If you will report back to the central
21 jury part, I think they will give you your certificates of
22 attendance down there now.

23 (Two alternate jurors discharged.)

24 (Deputy marshal sworn.)

25 THE COURT: All right, ladies and gentlemen.

Charge to the Jury (pp.11a to 55a)

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I am going to ask Mr. Wallace to mark as a Court exhibit
this copy of the indictment.

Remember there is count 1, which is the con-
spiracy count. There isn't any count 2. Then there
is counts 3, 4 and 5. And I think I have been over them
with you.

Of course, your verdict on count 1, which covers
both Mr. Rogers and Mr. Marciano, will be either guilty or
not guilty; on count 4, which covers Mr. Rogers alone, your
verdict will be guilty or not guilty; on counts 3 and 5,
which cover Mr. Marciano alone, your verdict will be guilty
or not guilty.

All right.

(Court's Exhibit 1 marked.)

THE COURT: All right, ladies and gentlemen.
You may now retire to consider your verdict.

Let me suggest another thing. If you get back
there and decide your deliberations will go until lunch,
let the marshal know and he will get you some sandwiches.

Thank you very much.

(The jury left the courtroom to deliberate
upon a verdict at 11.00 o'clock a.m.)

THE COURT: We will stand in recess, gentlemen.

(Recess.)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

LEON ROGERS,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

James A. Steele

being duly sworn,

*deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
310 W. 146th St., New York, N.Y.**That on the 18th day of Sept 1975 at 1 St. Andrews Plaza, N.Y., N.Y.**deponent served the annexed Appendix*

upon

Paul Curran

the U.S. Attorney in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the

Print name beneath signature

JAMES A. STEELE

*Sworn to before me, this 18th
day of Sept 1975*

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977